

# EXHIBIT 96

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE MIDDLE DISTRICT OF TENNESSEE

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5   NIKKI BOLLINGER GRAE, Individually

6   and Behalf of All Others Similarly

7   Situated,

8                   Plaintiff,

9   vs.                   CASE NO.

10                       3:16-CV-02267

11   CORRECTIONS CORPORATION OF

12   AMERICA, et al.,

13                   Defendants.

14

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17                   CONFIDENTIAL

18           VIDEO DEPOSITION OF HARLEY G. LAPPIN

19           Reported Remotely through Videoconference

20                   July 28, 2020

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23

24   Reported by:

25   Elisabeth A. Miller Lorenz

RMR, CRR, LCR No. 66

Job No.: 10071101

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21   Video deposition of HARLEY G. LAPPIN was

22   taken on behalf of Plaintiff, Reported Remotely

23   through Videoconference, beginning at

24   11:08 A.M. EST, and ending at 10:28 p.m. EST, on

25   Tuesday, July 28, 2020, before Elisabeth A. Miller

26   Lorenz, RMR, CRR, and LCR No. 66.

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23 Also Present:

24 Kirill Davidoff, Videographer

25

1                   \* \* \*

2                   HARLEY G. LAPPIN

3       was called as a witness, and after having been first  
4       duly sworn, testified as follows:

5                   THE VIDEOGRAPHER: Please proceed.

6                   E X A M I N A T I O N

7       BY MR. FORGE:

8       Q     Good morning, Mr. Lappin. This is  
9       Jason Forge.

10            Can you hear me?

11      A     Yes, I can, sir.

12      Q     Mr. Lappin, I think we've all gotten an  
13      introduction to Zoom over the past several months.

14            Have you used Zoom previously?

15      A     Infrequently. I have used Skype, so there  
16      are some similarities.

17      Q     So you know that everything we say generally  
18      speaking can only be transmitted on one side at a  
19      time. So if I'm talking, it doesn't really work if  
20      you're talking at the same time.

21            Okay?

22      A     Yes, sir.

23      Q     Of course, that works in reverse. Whenever  
24      you're talking, I'll do my best to avoid cutting you  
25      off or speaking over you.

1 guidelines had multiple parts, so there was an  
2 overarching subject matter area with a number of  
3 parts that -- that were utilized as part of that one  
4 guideline.

5           So it very well could be that you met  
6 all the criteria with the exception of one part, and  
7 it would be a repeat -- or a finding. You come back  
8 the next time, and you've got that piece fixed, but  
9 one of the other parts -- so these cascade.

10           And so I just want to make sure I'm  
11 clear that it could occur that we missed the same  
12 part each time, but oftentimes we had corrected that  
13 deficiency but then missed another part within that  
14 same deficiency, which would result in a repeat or a  
15 repeat repeat and so on.

16           So it's not like these deficiencies,  
17 which there were many guidelines, many guidelines,  
18 especially in medical, an enormous amount of detail  
19 within each of those guidelines.

20           So I don't even want to guess at how  
21 many guidelines there were applicable to medical.  
22 But even within those guidelines, there were a  
23 cascading array of -- of components, somewhat  
24 related to the overarching guideline.

25           So reality is, you may fix one part



1 that was deficient previously and come back and  
2 you've corrected that, but a second part of that  
3 same guideline was deficient. The entire deficiency  
4 is then a repeat. So the bar is very, very high and  
5 in an area of significant challenge with lots of  
6 detail and lots of requirements. So I just wanted  
7 to make sure that was clear.

8 But, no, I do not recall us publishing,  
9 again, or informing the public or others.

10 Now, again, I was not at many of the  
11 analyst days, and I didn't -- I didn't get an  
12 overview of what was released.

13 But to my knowledge, we did not  
14 publicly announce or inform about the internal  
15 workings of the monitoring of the Bureau of  
16 Prisons -- of our contracts with the Bureau of  
17 Prisons.

18 BY MR. FORGE:

19 Q And by internal workings, in this context,  
20 you're saying you did not publicly disclose whenever  
21 you received significant findings in health  
22 services, for example?

23 MR. GLENNON: Objection to form.

24 THE WITNESS: No, I mean, there was  
25 always -- I'm just going -- whether I was in the

1 Bureau of Prisons and receiving audits from our  
2 facilities on medical reviews or in CoreCivic, there  
3 were always deficiencies in medical, always. It was  
4 not unique to CoreCivic. It was the nature of the  
5 business, given the complexity of managing and  
6 providing health and mental health care in a prison  
7 setting and the rigorous requirements requested by  
8 the customer.

9 So at the Bureau of Prisons, my own  
10 audit process, never could I remember getting a  
11 clean audit in medical.

12 So I just want to put it into  
13 perspective, very, very challenging area, very  
14 detailed, very rigorous, and -- so this is not at  
15 all uncommon -- an uncommon outcome in the  
16 correctional setting, at least in my experience, my  
17 30-plus years of experience in the Bureau of Prisons  
18 and CoreCivic, let alone the communication I had  
19 with other directors of corrections who are  
20 similarly situated with challenges in -- in  
21 providing mental -- medical and mental health care.

22 BY MR. FORGE:

23 Q So if we could just kind of redirect your  
24 attention to the actual question I posed to you,  
25 which was, you did not publicly disclose whenever



1 you received significant findings in health

2 services, did you?

3 A Did not.

4 Q You could have disclosed the fact that you

5 were receiving significant findings in health

6 services and given that entire explanation you just

7 gave to us, right? You could have done that?

8 MR. GLENNON: Objection, foundation.

9 THE WITNESS: We could have done that.

10 BY MR. FORGE:

11 Q I'm sorry?

12 A We could have done that.

13 Q But you didn't, did you?

14 A Again, I --

15 MR. GLENNON: Objection, foundation.

16 THE WITNESS: We did not publicly

17 disclose these unless we were asked about them, and

18 it was a common -- I -- I think amongst most of our

19 investors they understood that deficiencies occurred

20 as we have audits and reviews.

21 BY MR. FORGE:

22 Q So tell me -- tell me -- identify for me a

23 single investor who acknowledged to you an awareness

24 that CCA was receiving significant findings in

25 health services for Cibola and Eden?

1 A I can't --

2 MR. GLENNON: Objection, foundation  
3 and -- and compound.

4 THE WITNESS: Yeah, so I -- I didn't  
5 interact with the investors that much, and so at our  
6 annual meeting, there were occasions when someone  
7 brought this -- raised the issue of findings,  
8 whether it's state, federal, local, wherever it was  
9 being initiated.

10 And we responded to those openly,  
11 acknowledged, yes, there were some deficiencies in  
12 these areas, and here's what we're doing to correct.  
13 So it was not a secret by any means.

14 My guess is, anybody that gets audited  
15 and the auditors are doing their jobs -- that's what  
16 auditors do. They look for problems; they look for  
17 issues.

18 So this is commonplace far beyond  
19 corrections. Hospitals, schools, so on and so  
20 forth.

21 So I think -- I think -- I would assume  
22 that most shareholders that have any interest  
23 recognize that when you're being reviewed and  
24 audited, you're going -- there's going to be some  
25 deficiencies.

1 inmate speaks Spanish, correct?

2 A I would assume that it does if the probation  
3 officer had done the job they are expected to do.

4 Q So as chief corrections officer, you would  
5 agree with me that effective intelligence gathering  
6 is critical to the safe operation of a prison,  
7 correct?

8 MR. GLENNON: Objection, vague.

9 THE WITNESS: Yes.

10 BY MR. FORGE:

11 Q You would agree that effective intelligence  
12 gathering is critical to the effective operation of  
13 a prison, correct?

14 A Could you repeat it?

15 MR. GLENNON: Same objection.

16 BY MR. FORGE:

17 Q Yes.

18 Effective intelligence gathering is critical  
19 to the, I'll say, efficient operation of a prison?

20 MR. GLENNON: Same objection.

21 THE WITNESS: Yes.

22 BY MR. FORGE:

23 Q In all your career with all the BOP  
24 facilities you oversaw, can you identify any  
25 systemic failure in intelligence gathering that was

1 worse than CCA's failure to have a single  
2 Spanish-speaking intelligence officer for the  
3 intelligence section at Adams?

4 MR. GLENNON: Objection, vague,  
5 foundation.

6 THE WITNESS: Repeat the question.

7 BY MR. FORGE:

8 Q Sure.

9 In all of your career, can you identify for  
10 me a single systemic failure in intelligence  
11 gathering that was worse than CCA's failure to have  
12 a single Spanish-speaking intelligence officer at  
13 Adams?

14 MR. GLENNON: Same objection.

15 THE WITNESS: I don't -- I don't  
16 consider it a failure. I think -- I think it's not  
17 uncommon, in my experience, 30-plus years, lots of  
18 prisons with many Spanish-speaking inmates and  
19 inmates from other countries, to have an  
20 intelligence office that may not have a  
21 Spanish-speaking member.

22 That has never, in my experience,  
23 precluded us from gathering the intelligence we  
24 needed to monitor the inmate population.

25



1 BY MR. FORGE:

2 Q Can you identify for me a single BOP  
3 facility with a -- where the majority of the  
4 population was Spanish speaking, yet the BOP  
5 facility lacked a single Spanish-speaking  
6 intelligence officer?

7 A There are no Bureau of Prisons -- at least  
8 while I was director of Bureau of Prisons and prior,  
9 there were no Bureau of Prisons facilities that  
10 operated with a majority or 100 percent of their  
11 facility being Spanish speaking. Did not exist.

12 Q Okay.

13 A It didn't exist --

14 MR. GLENNON: Hold on. Hold on. Hold  
15 on, Jason. Let him answer the question, please.

16 THE WITNESS: It didn't exist because  
17 they knew that a safer prison was one that had a  
18 more balanced population, that is a mixture of  
19 non-U.S. citizens, a mixture -- non-U.S. citizens  
20 with U.S. citizens, a balance in the way of race,  
21 age, and -- age, race, gangs, in the way of gangs.

22 So the Bureau operated internally a  
23 balanced inmate population as best they could,  
24 taking into consideration the number of non-U.S. and  
25 U.S. citizens, the number of -- number of different

1 THE WITNESS: Again, I -- I don't have  
2 a -- an e-mail reflecting that. I don't recall the  
3 conversation. I would have probably pushed back on  
4 Mike. I think he was emotional and overreacting a  
5 little bit about the situation. He's a guy that  
6 expects perfection. And it wasn't meeting his  
7 expectation, and he was sharing that with his  
8 colleague.

9 BY MR. FORGE:

10 Q So did you disagree with the sentiment that  
11 we have addressed these issues -- and I'm talking  
12 about medical -- health services issues -- we have  
13 addressed health services issues too many times  
14 without any positive results? Did you disagree with  
15 that sentiment?

16 A I would disagree --

17 MR. GLENNON: Object to form.

18 THE WITNESS: I would disagree with  
19 that sentiment.

20 BY MR. FORGE:

21 Q But you don't know whether you ever actually  
22 expressed your disagreement, right?

23 A I don't.

24 Q And next he states, My crew stands ready to  
25 assist you in whatever means necessary to correct

1 the continuous medical problems at our Cibola  
2 facility.

3 Do you agree or disagree that there were  
4 continuous medical problems at the Cibola facility?

5 MR. GLENNON: Objection, vague.

6 THE WITNESS: We continued to have some  
7 deficiencies. I -- I think the situation was much  
8 improved in the aftermath of the cure notice, and we  
9 were -- we were moving in a positive direction.

10 BY MR. FORGE:

11 Q If you could, please, turn to Tab 103.

12 MR. FORGE: I'm going to mark this as  
13 Exhibit 487.

14 (Marked Exhibit No. 487.)

15 MR. GLENNON: Jason, did you post this  
16 to the chat box?

17 MR. FORGE: I'm doing that right now.

18 BY MR. FORGE:

19 Q Is Exhibit 487, Mr. Lappin, is that a  
20 document that bears a Bates No. 0058340?

21 A Yes.

22 Q Does that appear to be a -- an e-mail chain  
23 between various CCA employees that begin with an  
24 e-mail from John Baxter to you, among others?

25 A Yes.

1 Q And is the subject -- is it dated June 16th,  
2 2016?

3 A The e-mail from John is dated June 15th; the  
4 e-mail above that is dated June 16th.

5 Q And the subject for the e-mail was Cibola  
6 medical review, correct?

7 A Yes.

8 Q Do you see that Jeb Beasley wrote, We are  
9 dead? Do you see that?

10 A I do.

11 Q Did you agree as of June 16th, 2016, that  
12 CCA was in jeopardy of not getting a renewal of the  
13 Cibola contract?

14 MR. GLENNON: Objection, foundation,  
15 calls for speculation.

16 THE WITNESS: I was not part of that --  
17 part of that e-mail, and, you know, I can't recall  
18 exactly what I was thinking on that date. I never  
19 give up. And until I'm told otherwise, I made the  
20 assumption we were going to be running Cibola into  
21 the future.

22 BY MR. FORGE:

23 Q So -- so irrespective of the --

24 A I was not in agreement that we were dead.

25 Q But I didn't ask you if you were dead. I



1 asked you if you felt as of June of 2016 that CCA  
2 was in jeopardy of losing the Cibola facility as far  
3 as not getting it renewed.

4 MR. GLENNON: Same objections.

5 THE WITNESS: Again, remained  
6 optimistic and allowed them to work through the  
7 process.

8 BY MR. FORGE:

9 Q So you did not consider there to be any  
10 unusual risk as of June of 2016 concerning --

11 MR. GLENNON: Objection.

12 BY MR. FORGE:

13 Q -- on the --

14 MR. GLENNON: I'm sorry, Jason, I  
15 didn't mean to cut you off.

16 Objection, vague.

17 THE WITNESS: Given the way our  
18 contracts are written, they're -- they're always at  
19 risk. Most of the contracts have a 30- or 60-day  
20 out. Anybody could come along at any time and say,  
21 Geez, we don't need the beds anymore; we want -- we  
22 want to end the contract.

23 So, you know -- from my perspective, I  
24 was running prisons, and I was doing the level best  
25 we could to perform at the highest level. And so I

1 didn't get too bogged down in this. I was very  
2 optimistic that we could continue to perform at an  
3 adequate level, and we continued in that direction.

4 BY MR. FORGE:

5 Q So to answer my question, you did not -- as  
6 of June of 2016, you did not consider there to be an  
7 unusual risk of losing Cibola?

8 MR. GLENNON: Object to form, vague.

9 THE WITNESS: Again, always thought  
10 there was risk, granted. Given some of the  
11 challenges we had at Cibola, I -- I probably would  
12 lean towards more concern than I had at other  
13 contracts.

14 BY MR. FORGE:

15 Q If you can, please, turn to the next tab,  
16 which is 104.

17 MR. FORGE: I will mark that as  
18 Exhibit 488.

19 (Marked Exhibit No. 488.)

20 THE WITNESS: Okay.

21 MR. GLENNON: Jason, I trust this is  
22 going to come up on the chat -- chat box.

23 MR. FORGE: You got it.

24 MR. GLENNON: Thank you.

25

1 BY MR. FORGE:

2 Q The Bates number that you're looking at,  
3 0045369?

4 A Yes.

5 Q And do you see that Bart VerHulst --  
6 Bart VerHulst is -- wrote on June 16th, 2016, to  
7 Jeb Beasley, I see no way to save Cibola?

8 A I see that.

9 Q You see that?

10 And I think you said earlier you disagree  
11 with that sentiment.

12 MR. GLENNON: Objection, vague,  
13 foundation.

14 THE WITNESS: I wasn't a part of this  
15 discussion.

16 But if you're asking me -- as I said  
17 prior, I remained very optimistic about all of our  
18 facilities until someone says otherwise.

19 So, no, I -- I continued to perform --  
20 work with the expectation we could continue to  
21 perform at Cibola satisfactorily.

22 BY MR. FORGE:

23 Q Did you say continue to perform at Cibola  
24 satisfactorily?

25 A Yes.

1 reasons the BOP conveyed for the loss of that  
2 contract was CCA's past performance, correct?

3 MR. GLENNON: Objection, foundation.

4 THE WITNESS: That's typical of any  
5 review. But -- yeah, they look at past performance.

6 BY MR. FORGE:

7 Q But you're aware that the BOP conveyed that  
8 one of the reasons why CCA did not receive -- why it  
9 lost the Northeast Ohio Correctional Center contract  
10 was due to past performance, correct?

11 MR. GLENNON: Objection, foundation,  
12 vague, form.

13 THE WITNESS: They -- they evaluate  
14 past performance, and typically that's at the  
15 facility that's being rebid.

16 BY MR. FORGE:

17 Q But in this particular instance, the BOP  
18 actually said it was poor past performance at other  
19 facilities that contributed to CCA's failed bid,  
20 correct?

21 MR. GLENNON: Same objection.

22 THE WITNESS: Yeah, not that I recall.  
23 I mean, I'm reading the response from the BOP, and  
24 it's pretty generic.

25 And there was a lot of variation in --



1 you know, I don't -- I don't know exactly what all

2 they considered.

3 BY MR. FORGE:

4 Q So is it your testimony that you were  
5 completely unaware of the BOP conveying that one of  
6 the reasons CCA did not obtain the contract for  
7 Northeast Ohio Correctional Center was due to past  
8 performance in other facilities?

9 MR. GLENNON: Object to form.

10 THE WITNESS: I don't recall -- I don't  
11 recall that specifically. Again, I'm relying  
12 somewhat on my experience in -- in the Bureau, and  
13 we focused on the performance at the facility.

14 I acknowledge there was discussions  
15 about that as well as the -- the shared -- the  
16 shared population at Northeast Ohio. But, you know,  
17 I relied solely on their written response as to  
18 their reasons for not awarding the contract.

19 BY MR. FORGE:

20 Q You're -- you're aware there was a debrief  
21 with the BOP in which the BOP provided the reasons,  
22 correct?

23 MR. GLENNON: Object to form.

24 THE WITNESS: As I recall, there was.

25

1 BY MR. FORGE:

2 Q And you're aware that during that debrief,  
3 the BOP explained that one of the reasons was  
4 because of past performance at other facilities,  
5 correct?

6 MR. GLENNON: Objection, form,  
7 foundation.

8 THE WITNESS: And I don't recall that  
9 specific discussion given how long ago it was and  
10 all the other things that were -- were going on at  
11 the time. So I don't recall that specifically.  
12 I -- I do not.

13 BY MR. FORGE:

14 Q Do you recall discussing with anyone at CCA  
15 the BOP's source selection decision for this  
16 contract?

17 MR. GLENNON: Objection, vague.

18 THE WITNESS: Source selection  
19 decision?

20 BY MR. FORGE:

21 Q Yes.

22 As -- as -- you might know it as SSD.

23 A Sorry, doesn't ring a bell.

24 Q That doesn't ring a bell with the BOP in  
25 your experience?

1 I, the undersigned, a Licensed Court  
2 Reporter of the State of Tennessee, do hereby  
3 certify:

4 That the foregoing proceedings were  
5 taken before me at the time and place herein set  
6 forth; that any witnesses in the foregoing  
7 proceedings, prior to testifying, were duly sworn;  
8 that a record of the proceedings was made by me  
9 using machine shorthand, which was thereafter  
10 transcribed under my direction; that the foregoing  
11 transcript is a true record of the testimony given.

12 Further, that if the foregoing pertains  
13 to the original transcript of a deposition in a  
14 federal case, before completion of the proceedings,  
15 review of the transcript [ X ] was [ ] was not  
16 requested.

17 I further certify I am neither  
18 financially interested in the action nor a relative  
19 or employee of any attorney or party to this action.

20 IN WITNESS WHEREOF, I have this date  
21 subscribed my name.

22 Dated: August 3, 2020



23  
24 Elisabeth A. Miller Lorenz  
25 RMR, CRR, LCR No. 66  
Georgia CR No. 5266-8739-6377-3952